Calendar No. 406

98TH CONGRESS
1st Session

SENATE

REPORT
No. 98-243

CAPITAL FUNDS FOR FISH PROCESSING FACILITIES

SEPTEMBER 26, 1983.—Ordered to be printed

Mr. PACKWOOD, from the Committee on Commerce, Science, and Transportation, submitted the following

REPORT

[To accompany S. 254]

The Committee on Commerce, Science, and Transportation, to which was referred the bill (S. 254) to provide for inclusion of capital construction funds for fishery processing facilities, having considered the same, reports favorably thereon with an amendment in the nature of a substitute and recommends that the bill do pass.

PURPOSE OF THE BILL

The bill, as reported, would extend eligibility for the capital construction fund to the domestic fish processing industry. Additional fish processing capability is needed to match the expanded capacity of the fish harvesting sector.

BACKGROUND AND NEEDS

The capital construction fund is a program which permits fishermen to set aside a portion of their business profits in a tax-deferred account. The money in this account is eventually used for making capital improvements (the purchase of new vessels and gear, the refurbishing of vessels or the purchase of a reconditioned vessel). The program has been very helpful in the expansion and modernization of the domestic fishing fleet.

However, due in part to a lack of modern fish processing facilities, this country still suffers from a $3 billion annual trade deficit for fishery products. This trade deficit is not due to a lack of available fish, nor to a lack of harvesting capacity. It largely stems from the fact that the U.S. processor are not geared up for handling the types and volume of fish available in the U.S. Fishery Conservation Zone.

11-010 O

S263-31

S. 254 was introduced in response to this situation. It would extend the benefits of the capital construction fund program to the domestic fish processing industry. Through this action it is hoped that capital improvements will be stimulated in the processing industry to the same degree as they have been in the fish harvesting sector. This will help in moving toward the goal of "Americanizing" the use of the resources of the FCZ.

Legislative History

S. 254 was introduced by Senators Stevens, Long, Packwood, Murkowski and Trible on January 27, 1983. S. 254 was the subject of a hearing before the Commerce Committee's National Ocean Policy Study and the Merchant Marine Subcommittee May 12, 1983. At the hearing testimony was received from numerous interested parties including Senator Murkowski, a witness from the National Oceanic and Atmospheric Administration and representatives of five major seafood harvesting and processing firms.

The testimony was overwhelmingly positive, although some witnesses did express concern about possible overcapitalization of the processing sector as a result of the availability of this program. It is generally agreed that Federal financing assistance resulted in overcapitalization of some segments of the harvesting sector. The witnesses suggested that care be taken to make sure that this does not occur in the processing sector. The Committee agrees with this viewpoint and encourages the National Marine Fisheries Service to closely monitor the situation once the program is in place and operating.

S. 254 was ordered reported by the Committee on August 2, 1983, with an amendment in the nature of a substitute.

Summary of Major Provisions

S. 254, as reported, which amends the Merchant Marine Act of 1936 would:

1. Add language to the existing statute to make fish processing facilities eligible for the capital construction fund program.
2. Clarify that any fund (whether set up for a vessel or for a processing facility) can be used to finance the purchase of either vessels or processing facilities.
3. Provide for the transfer of monies from one fund into another and that contributions to a fund may be made by more than one person.
4. Prohibit the Secretary from setting a minimum level for withdrawals from a fund.
5. Clarify that withdrawals cannot be made to finance routine minor repairs and maintenance.
6. Add seven new definitions to the act.

Estimated Costs

In accordance with paragraph 11(a) of rule XXVI of the Standing Rules of the Senate and section 403 of the Congressional Budget Act of 1974, the Committee provides the following cost estimate, prepared by the Congressional Budget Office.

CONGRESSIONAL BUDGET OFFICE,
U.S. CONGRESS,
Washington, D.C., September 23, 1983.

Hon. BOB PACKWOOD,
Chairman, Committee on Commerce, Science and Transportation, U.S. Senate, Dirksen Senate Office Building, Washington, D.C.

DEAR MR. CHAIRMAN: Pursuant to Section 403 of the Congressional Budget Act of 1974, the Congressional Budget Office has reviewed S. 254, a bill to provide for inclusion of Capital Construction Funds for fishery processing facilities, as ordered reported by the Senate Committee on Commerce, Science and Transportation, August 2, 1983.

The bill would extend eligibility for the tax deferral benefits currently provided by the Capital Construction Fund program, administered by the National Oceanic and Atmospheric Administration, to include the domestic fish processing industry. This program, under current law, allows fishing vessel owners to deposit a portion of their business profits in a tax deferred account, so long as that income is eventually used in the construction of new vessels, the refurbishing of older vessels, or the purchase of reconditioned vessels.

According to the Joint Committee on Taxation (JCT), the annual decrease to tax revenues resulting from the existing program is about $35 million. Based on information from the JCT, it is expected that enactment of S. 254 would result in additional annual tax losses of $44 million in fiscal year 1984, $24 million in 1985, $20 million in 1986, $16 million in 1987, and $14 million in 1988.

Administrative costs for the program are about $300,000 per year under current law. Based on information from the National Marine Fisheries Service, it is estimated that administrative costs would remain under $500,000 annually under the provisions of S. 254.

Enactment of this bill would not significantly affect the budgets of state and local governments.

Should the Committee so desire, we would be pleased to provide further details on this estimate.

Sincerely,

RUDOLPH G. PENNER, *Director.*

REGULATORY IMPACT STATEMENT

In accordance with paragraph 11(b) of Rule XXVI of the Standing Rules of the Senate, the Committee provides the following evaluation of the regulatory impact of the legislation:

Enactment of S. 254, as reported, will encourage improvements in the fish processing industry. Members of the fishing industry will be permitted to set aside a portion of their business profits in a tax deferred account, which currently are usable only for capital improvements involving the harvest of fish.

1. *Number Persons Covered.*—S. 254 could increase the number of persons affected by the Merchant Marine Act of 1936. Fishermen and others not presently utilizing the tax deferral option for capital improvements to harvesting facilities could do so for processing facilities. It is expected, however, that some fishermen already utilizing the capital construction fund for harvesting improvement will expand

into processing improvements as well. The effect on these individuals should be positive.

2. *Economic Impact.*—The economic impact upon the fishing industry will also be positive. This bill will stimulate a much undercapitalized sector of the fishing industry—the processing sector.

3. *Privacy.*—S. 254 will not have any additional effect on the privacy of individuals beyond the present capital construction fund.

4. *Paperwork.*—Paperwork would be required to obtain the benefits of the program. The application and reporting requirements are considered minor when compared to the economic benefits to the industry and individual fishermen.

The Committee expects only a few minor changes to existing regulations as a result of this legislation.

Section-by-Section Analysis

SECTION 1.—INCLUSION OF CAPITAL CONSTRUCTION FUNDS FOR SHORE-BASED FISHERY PROCESSING FACILITIES

This section adds language to section 607(a) of the Merchant Marine Act of 1936 that makes fish processing facilities eligible for the capital construction fund program. The section also makes it clear that any fund (whether set up for a vessel or for a processing facility) can be used to finance the purchase of either vessels or processing facilities. In effect, the uses of the fund are interchangeable.

This section also provides for the transfer of monies from one fund into another and that contributions to a fund may be made by more than one person.

Lastly, the section prohibits the Secretary from setting a minimum level for withdrawals from a fund, and it is made clear that withdrawals from a fund cannot be made to finance routine, minor repairs and maintenance.

SECTION 2.—DEFINITIONS

This section amends section 607(k) of the Merchant Marine Act of 1936 by adding seven new definitions to the act. The new terms being defined are:

1. "eligible fishery facility"
2. "qualified fishery facility"
3. "agreement fishery facility"
4. "fishery facility"
5. "fishing" and "fishing vessel"
6. "fish"
7. "citizen of the Northern Mariana Islands"

SECTION 3.—TECHNICAL AND CONFORMING AMENDMENTS

This section makes necessary changes in other parts of section 607 of the Merchant Marine Act of 1936 in order to reflect the fact that fishery facilities are now eligible for the capital construction fund program.

SECTION 4.—EFFECTIVE DATE

The amendments will take effect upon enactment of the bill.

Changes in Existing Law

In compliance with paragraph 12 of rule XXVI of the Standing Rules of the Senate, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new material is printed in italic, existing law in which no change is proposed is shown in roman):

Section 607 of the Merchant Marine Act, 1936 (46 U.S.C. 1177)

Sec. 607. [(a) Agreement Rules. Any citizen of the United States owning or leasing one or more eligible vessels (as defined in subsection (k)(1)) may enter into an agreement with the Secretary under, and as provided in, this section to establish a capital construction fund (hereinafter in this section referred to as the "fund") with respect to any or all of such vessels. Any agreement entered into under this section shall be for the purpose of providing replacement vessels, additional vessels, or reconstructed vessels, built in the United States and documented under the laws of the United States for operation in the United States foreign, Great Lakes, for noncontiguous domestic trade or in the fisheries of the United States and shall provide for the deposit in the fund of the amounts agreed upon as necessary or appropriate to provide for qualified withdrawals under subsection (f). The deposits in the fund, and all withdrawals from the fund, whether qualified or nonqualified, shall be subject to such conditions and requirements as the Secretary may by regulations prescribe or are set forth in such agreement; except that the Secretary may not require any person to deposit in the fund for any taxable year more than 50 percent of that portion of such person's taxable income for such year (computed in the manner provided in subsection (b)(1)(A)) which is attributable to the operation of the agreement vessels.]

(a) Agreement Rules.—(1) Any citizen of the United States owning or leasing one or more eligible vessels (as defined in subsection (k)(1)), or one or more eligible fishery facilities (as defined in subsection (k)(10)), may enter into an agreement with the Secretary of Commerce under, and as provided in, this section to establish a capital construction fund (hereinafter in this section referred to as the 'fund') with respect to any or all of such vessels or facilities. Any agreement entered into under this section—

(A) shall be for the purpose of providing—

(i) replacement vessels, additional vessels, or reconstructed vessels, built in the United States and documented under the laws of the United States for operation in the United States foreign, Great Lakes, or noncontiguous domestic trade,

(ii) replacement fishing vessels, additional fishing vessels, or reconstructed fishing vessels, built in the United States, American Samoa, the Virgin Islands of the United States, Guam, the Northern Mariana Islands, or any other commonwealth, territory, or possession of the United States and documented under the laws of the United States for operation in the fisheries of the United States, or

(iii) replacement fishery facilities, additional fishery facilities, or reconstructed fishery facilities, located in the United States, American Samoa, the Virgin Islands of the United States, Guam, the Northern Mariana Islands, or any other commonwealth, territory, or possession of the United States, and

(B) shall provide for the deposit in the fund of the amounts agreed upon as necessary or appropriate to provide for qualified withdrawals under subsection (f).

(2) In applying paragraph (1)(A)(ii) or (iii)—

(A) withdrawals may be made from a capital construction fund for the purchase of a used fishery vessel or a used fishery facility for any reconstruction purpose, if such reconstruction will contribute to the development of the United States fishing industry;

(B) nothing in this section shall be construed as prohibiting the establishment and use of a capital construction fund—

(i) with respect to fishing vessels for purposes of acquiring replacement, additional, or reconstructed fishery facilities,

(ii) with respect to fishery facilities for purposes of acquiring replacement, additional, or reconstructed fishing vessels, or

(iii) for fishing vessels and fishery facilities;

and

(C) nationals of the United States and citizens of the Northern Mariana Islands shall be treated as citizens of the United States.

(3) The deposits in the fund, and all withdrawals from the fund, whether qualified or nonqualified, shall be subject to such conditions and requirements as the Secretary of Commerce may by regulation prescribe or are set forth in such agreement; except that the Secretary of Commerce may not require any person to deposit in the fund for any taxable year more than 50 percent of the sum of (A) that portation of such person's taxable income for such year which is attributable to the operation of the agreement vessels, and (B) that portion of such person's taxable income for such year which is attributable to the operation of the agreement fishery facilities. For purposes of the preceding sentence, taxable income shall be computed in the manner provided in subsection (b)(1)(A).

(4) Notwithstanding any other provision of law, any agreement for any of the purposes set forth in paragraph (1)(A)(ii) or (iii) may be amended in order to—

(A) allow for the withdrawal of moneys from the fund established by that agreement and the subsequent deposit of those moneys in a fund established, whether by the same or different persons, including partnerships under another existing agreement, or a new agreement, entered into for any such purpose or purposes; or

(B) provide that one or more other persons may be permitted to become parties thereto and deposit moneys into the fund established by such agreement; whether or not any of the moneys for deposit are withdrawn pursuant to an agreement amended under subparagraph (A).

(5) *The Secretary may not require, in the case of any agreement entered into for the purpose of reconstructing a fishing vessel or fishery facility, that a minimum withdrawal be made from the funds. For purposes of this section, the reconstruction or reconditioning of a fishing vessel or fishery facility does not include the routine minor repair or maintenance of the vessel or facility.*

(b) Ceiling on Deposits. (1) The amount deposited under subsection (a) in the fund for any taxable year shall not exceed the sum of:

(A) (*i*) that portion of the taxable income of the owner or lessee for such year (computed as provided in chapter 1 of the Internal Revenue Code of 1954 but without regard to the carryback of any net operating loss or net capital loss and without regard to this section) which is attributable to the operation of the agreement vessels in the foreign or domestic commerce of the United States or in the fisheries of the United States, (*ii*) *that portion of the taxable income of the owner or lessee for such year (as so computed) which is attirbutable to the operation of the agreement fisheries facilities*,

(B) the amount allowable as a deduction under section 167 of the Internal Revenue Code of 1954 for such year with respect to the agreement vessels *or the agreement fishery facilities*,

(C) if the transaction is not taken into account for purposes of subparagraph (A), the net proceeds (as defined in joint regulations) from (i) the sale or other disposition of any agreement vessel *or agreement fishery facility*, or (ii) insurance or indemnity attributable to any agreement vessel *or agreement fishery facility*, and

(D) the receipts from the investment or reinvestment of amounts held in such fund.

(2) In the case of a lessee, the maximum amount which may be deposited with respect to an agreement vessel *or an agreement fishery facility* by reason of paragraph (1)(B) for any period shall be reduced by any amount which, under an agreement entered into under this section, the owner is required or permitted to deposit for such period with respect to such vessel *or such facility (as the case may be)* by reason of paragraph (1)(B).

(3) For purposes of paragraph (1), the term "agreement vessel" includes barges and containers which are part of the complement of such vessel and which are provided for in the agreement.

(c)—(e) * * *

(f) PURPOSES OF QUALIFIED WITHDRAWALS.—(1) A qualified withdrawal from the fund is one made in accordance with the terms of the agreement but only if it is for:

(A) the acquisition, construction, or reconstruction of a qualified vessel *or a qualified fishery facility*,

(B) the acquisition, construction, or reconstruction of barges and containers which are part of the complement of a qualified vessel or

[(C) the payment of the principal on indebtedness incurred in connection with the acquisition, construction or reconstruction of a qualified vessel or a barge or container which is part of the complement of a qualified vessel.]

(C) the payment of the principal on indebtedness incurred in connection with the acquisition, construction, or reconstruction of—

(i) a qualified vessel,

(ii) a qualified fishery facility, or

(iii) a barge or container which is part of the complement of the qualified vessel.

Except to the extent provided in regulations prescribed by the Secretary subparagraph (B), and so much of subparagraph (C) as relates only to barges and containers, shall apply only with respect to barges and containers constructed in the United States.

(2) Under joint regulations, if the Secretary determines that any substantial obligation under any agreement is not being fulfilled, he may, after notice and opportunity for hearing to the person maintaining the fund, treat the entire fund or any portion thereof as an amount withdrawn from the fund in a nonqualified withdrawal.

(g) TAX TREATMENT OF QUALIFIED WITHDRAWALS.—(1) Any qualified withdrawal from a fund shall be treated—

(A) first as made out of the capital account,

(B) second as made out of the capital gain account, and

(C) third as made out of the ordinary income account.

(2) If any portion of a qualified withdrawal for a vessel, *fishery facility*, barge, or container is made out of the ordinary income account, the basis of such vessel, *fishery facility*, barge, or container shall be reduced by an account equal to such portion.

(3) If any portion of a qualified withdrawal for a vessel, *fishery facility*, barge, or container is made out of the capital gain account, the basis of such vessel, *fishery facility*, barge, or container shall be reduced by an amount equal to—

(A) Five-eighths of such portion, in the case of a corporation (other than an electing small business corporation, as defined in section 1371 of the Internal Revenue Code of 1954), or

(B) One-half of such portion, in the case of any other person.

(4) If any portion of a qualified withdrawal to pay the principal on any indebtedness is made out of the ordinary income account or the capital gain account, then an amount equal to the aggregate reduction which would be required by paragraphs (2) and (3) if this were a qualified withdrawal for a purpose described in such paragraphs shall be applied, in the order provided in joint regulations, to reduce the basis of vessels, *fishery facilities*, barges, and containers owned by the person maintaining the fund. Any amount of a withdrawal remaining after the application of the preceding sentence shall be treated as a nonqualified withdrawal.

(5) If any property the basis of which was reduced under paragraph (2), (3), or (4) is disposed of, any grain realized on such disposition, to the extent it does not exceed the aggregate reduction in the basis of such property under such paragraphs, shall be treated as an amount referred to in subsection (h) (3) (A) which was withdrawn on the date of such disposition. Subject to such conditions and requirements as may be provided in joint regulations, the preceding sentence shall not apply to a disposition where there is a redeposit in an amount determined under joint regulations which will, insofar as practicable, restore the fund to the position it was in before the withdrawal.

(h)—(i)* * *

(k) DEFINITIONS.—For the purposes of this section—

(1)—(9)* * *

(10) The term "eligible fishery facility" means any fishery facility which is located in the United States.

(11) The term "qualified fishery facility" means any fishery facility—

(A) which is located in the United States, and

(B) which the person maintaining the fund agrees with the Secretary of Commerce will be used for one or more of the functions described in paragraph (13).

For purposes of this paragraph, paragraphs (1), (2), and (3) insofar as they relate to a fishing vessel, and paragraph (10), the term "United States" includes American Samoa, the Virgin Islands of the United States, the Northern Mariana Islands, Guam, and any other commonwealth, territory, or possession of the United States; and, when applied with respect to a fishery facility described in paragraph (13)(B), includes the fishery conservation zone established by section 101 of the Fishery Conservation and Management Act of 1976 (16 U.S.C. 1811).

(12) The term "agreement fishery facility" means any eligible fishery facility or qualified fishery facility which is subject to an agreement entered into under this section.

(13) The term "fishery facility" means—

(A) for operations on land—

(i) any structure or appurtenance thereto designed for the unloading and receiving from vessels, the processing, the holding pending processing, the distribution after processing, or the holding pending distribution, of fish from one or more fisheries,

(ii) the land necessary for any such structure or appurtenance described in clause (i), and

(iii) equipment which is for use in connection with any such structure or appurtenance and which is necessary for the performance of any function referred to in clause (i); or

(B) for operations other than on land, any vessel built in the United States and used for, equipped to be used for, or of a type which is normally used for, the processing of fish;

but only if such structure, appurtenance, land, and equipment or vessel is owned by an individual who is a citizen or national of the United States or a citizen of the Northern Mariana Islands or by a corporation, partnership, association, or other entity that is a citizen of the United States within the meaning of section 2 of the Shipping Act, 1916 (46 U.S.C. 802), and for purposes of applying such section 2 with respect to this section—

(i) the term "State" as used therein includes any State, the District of Columbia, the Commonwealth of Puerto Rico, American Samoa, the Virgin Islands of the United States, Guam, the Northern Mariana Islands, or any other commonwealth, territory, or possession of the United States; and

(ii) nationals of the United States or citizens of the Northern Mariana Islands shall be treated as citizens of the United States in meeting any applicable ownership requirement.

(14) The terms "fishing" and "fishing vessel" have the meanings given such terms by paragraphs (10) and (11) of section 3 of the Fishery Conservation and Management Act of 1976 (16 U.S.C. 1802).

(15) The term "fish" means finfish, mollusks, crustaceans, and all other forms of marine animal and plantlife other than marine mammals and birds.

(16) The term "citizen of the Northern Mariana Islands" means—

(A) an individual who qualifies under section 8 of the Schedule on Transitional Matters attached to the Constitution of the Northern Mariana Islands; or

(B) a corporation, partnership, association, or other entity organized or existing under the laws of the Northern Mariana Islands, if such entity is owned (in the sense such term is used in section 2 of the Shipping Act, 1916) by individuals referred to in subparagraph (A) or citizens or nationals of the United States.

(1) * * *

○